

Customer No. 25280

Case 5113B

REMARKS

Applicants respectfully request entrance of the present amendment (after final rejection) in order to place the application in condition for allowance or at least to reduce the issues on appeal and/or to put the case in better form for appeal.

Claims 92, 98, 123, and 131 have been amended in the manner set forth above. Claims 91, 124, 130, 132, 134 – 136, and 138 have been canceled without prejudice. No new claims have been added. Hence, claims 88, 90, 92 – 123, 125 – 128, 131, and 149 remain for consideration. It is respectfully submitted that all remaining claims now stand in condition for allowance. Accordingly, reconsideration and withdrawal of all outstanding rejections is respectfully requested at this time.

Claim 91 was canceled as it was redundant of claim 88.

Claim 92 has been amended to depend from claim 88.

Claim 98 was amended to correct the density language.

Claim 123 was amended to include the tear strength language of claim 124.

Claims 130, 132, 134, 135, 136, and 138 were canceled and claim 131 was amended to depend from claim 88 to reduce the issues on appeal.

ART REJECTIONS:

Claims 88, 90 – 128, 130 – 132, 134 – 136, 138, and 149 were rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent 4,522,857 to Higgins in view of U.S. Patent 5,610,207 to De Simone et al.

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As regards all remaining claims, Applicants respectfully believe that it would not have been obvious to one of ordinary skill in the art to substitute a rebond foam product as taught by De Simone '207 for the foam layer in Higgins '857.

As described on pages 45 and 46 of the present application, rebond foam pads for broadloom carpet were known. Such rebond foam pad typically had large chip sizes, low density, non-uniform density, was frangible, fragile, and relatively thick. Also, such rebond foam pads were not used in preformed carpet tiles prior to the invention described in commonly owned U.S. Patent Application 09/721,871 and as described in the present application.

In addressing this same rejection earlier, Applicants submitted a first declaration of Richard L. Kilpatrick and a second or Supplemental Declaration of Richard L. Kilpatrick.

In addition to the earlier declarations of Richard L. Kilpatrick, Applicants respectfully submit herewith an additional declaration by Mr. Michael Norton supporting Applicants position that it was not obvious to substitute a rebond foam layer of De Simone et al. for the foam layer of Higgins '857.

Applicants respectfully request consideration of the attached Mr. Norton Declaration in order to place the application in condition for allowance or at least to have a full presentation of the issues on appeal.

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As described in the declarations, it would not have been obvious for one of ordinary skill in the carpet tile art to use rebond foam in a cushion back carpet tile.

Milliken & Company has a rebond foam cushion back commercial carpet tile product on the market today. Milliken & Company had a rebond foam cushion back residential Legato™ carpet tile system (that was sold in Home Depot stores) that enjoyed commercial success. Also, at present, at least one competitor of Milliken & Company is copying the rebond foam cushion back carpet tile of Milliken & Company. Commercial success and copying by others are both indicators of patentability.

In as much as Milliken & Company and at least one competitor have sold (after the present application filing date) and continue to sell rebond foam backed cushion back carpet tiles into the commercial tile market, it is Applicant's belief that it is clear that rebond foam backed carpet tiles are commercially viable and that the invention of the present application is allowable.

Further, as set forth, for example, in pages 96 – 103 of the present application, cushion back carpet tile samples having the same construction as Milliken Comfort Plus® cushion back carpet tiles with the exception of rebond foam (flame laminated to fiber- glass and felt) rather than filled polyurethane foam (in-situ laminated to the fiberglass and felt) (same face construction, same layer construction) were tested and found to have performance characteristics at least on par with filled polyurethane cushion back carpet tiles and to be rated for commercial use.

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Mr. Kilpatrick and Mr. Norton have both concluded that one of skill in the art would not have been motivated to substitute the foam layer in the tile disclosed in Higgins '857 with a rebond foam material from De Simone '207.

Accordingly, reconsideration and withdrawal of all outstanding rejections is requested at this time.

CONCLUSION:

On the grounds as set forth above, Applicants respectfully request that all remaining claims be passed to issue. While an attempt has been made to address all outstanding issues and to place the case in condition for allowance or at least in better form for appeal, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

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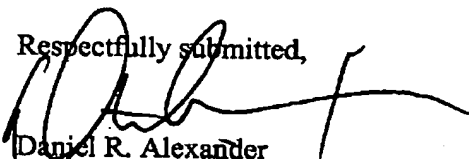
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EXTENSION OF TIME / FEE AUTHORIZATION:

Please charge any fees or credit any overpayment in connection with this Amendment
(including any extension of time fee) to Deposit Account 04-0500.

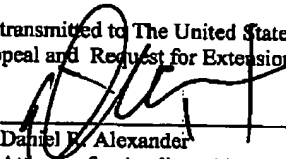
June 9, 2005

Respectfully submitted,


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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being facsimile transmitted to The United States Patent and Trademark Office at 703-872-9306 on June 9, 2005 along with attached Notice of Appeal and Request for Extension of Time.


Daniel R. Alexander
Attorney for Applicant(s)

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